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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/691,713	10/18/2000	Joseph E. Coury	1161	4980

7590 07/31/2003
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EXAMINER

PATEL, MITAL B

ART UNIT	PAPER NUMBER
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3761

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18

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 18

Application Number: 09/691,713
Filing Date: October 18, 2000
Appellant(s): COURY ET AL.

Forrest L. Collins
For Appellant

EXAMINER'S ANSWER

MAILED
JUL 31 2003
GROUP 3700

This is in response to the appeal brief filed 06/02/03.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

No amendment after final has been filed.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

The rejection of claims 1, 3-11, 14, 18, 19, and 20 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

6,098,617

Connell

8-2000

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 3, 4, 5, 6, and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Bird (US 5165398).

3. As to Claim 1, Bird teaches a personal gas supply delivery system comprising a moisturizing vessel **182** for when in use having the capability to contain a liquid to provide a source of moisture to increase the amount of moisture in a gas passing through the liquid, the moisturizing vessel having a first opening for receiving an influent gas, the moisturizing vessel having a second opening for an effluent gas, a first conduit connected with the second opening, the first conduit for when in use, for receiving the effluent gas, a gas flow alarm **287** connected with the first conduit and a second conduit connected with the gas flow alarm, the second conduit in fluid communication with the first conduit, the gas flow for determining the instantaneous pressure or flow volume of the influent gas and the effluent gas; the second conduit has a length such that the gas

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flow alarm, when is used by a recipient of the effluent gas, is proximate to the recipient of the effluent gas

4. As to Claim 3, Bird teaches a system wherein the gas flow alarm is set to alert a subject desiring to receive the effluent gas when the pressure of the influent gas and the effluent gas has met at least one predetermined setting.

5. As to Claim 4, Bird teaches a system wherein the gas flow alarm is set to alert the recipient of the effluent gas by at least one of an audible signal, a visual signal, and a vibratory signal.

6. As to Claim 5, Bird teaches a system wherein the gas flow alarm is set to alert a subject desiring to receive the effluent gas when the pressure of the influent gas and the effluent gas has met at least one predetermined setting and the alerting of the subject is by visible light.

7. As to Claim 6, Bird teaches a system wherein the gas flow alarm is set alert a subject desiring to receive the effluent gas when the pressure of the influent gas and the effluent gas has met at least one predetermined setting and the alerting of the subject is audible.

8. As to Claim 7, Bird teaches a system further comprising a reset or test feature.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, and 20 are rejected under 35

U.S.C. 103(a) as being unpatentable over Bird in view of Connell (US 6098617).

11. As to Claims 8 and 18 Bird fails to teach the particulars with respect to the gas flow alarm. However, Applicant has not stated how the particulars solve a stated problem or are advantageous over the prior art. Therefore, the gas flow alarm of Bird would function equally as well without comprising the functionality of the gas flow alarm.

12. As to Claims 9, 10, 19, and 20, the use of a transmitter and receiver and a radio signal as a means for alerting are known in the art.

13. As to Claim 11, Bird teaches a personal gas supply delivery system comprising a moisturizing vessel **182** for when in use having the capability to contain a liquid to provide a source of moisture to increase the amount of moisture in a gas passing through the liquid, the moisturizing vessel having a first opening for receiving an influent gas, the moisturizing vessel having a second opening for an effluent gas, a first conduit connected with the second opening, the first conduit for when in use, for receiving the effluent gas, a gas flow alarm **287** connected with the first conduit and a second conduit connected with the gas flow alarm, the second conduit in fluid communication with the first conduit, the gas flow for determining an instantaneous difference in the pressure or volume of the influent gas per unit of time and the volume of effluent gas per unit of time. Bird fails to specifically teach wherein the second conduit is unitary and connecting with a binary nasal cannula. Instead Bird teaches an endotracheal tube. However, Connell does teach that the use of a nasal cannula allows the patient to

achieve maximum oxygenation. Therefore, it would be obvious to one of ordinary skill in the art to substitute the endotracheal tube of Bird with the nasal cannula of Connell so that maximum oxygenation can be achieved by the patient.

14. As to Claim 13, Bird teaches a system wherein the gas flow alarm is set to alert a subject desiring to receive the effluent gas when an instantaneous difference in the volume of the influent gas per unit of time and the volume of effluent gas per unit of time has met at least one predetermined setting.

15. As to Claim 14, Bird teaches a system wherein the gas flow alarm is set to alert the recipient of the effluent gas by at least one of an audible signal, a visual signal, and a vibratory signal.

16. As to Claim 15, Bird teaches a system wherein the gas flow alarm is set to alert a subject desiring to receive the effluent gas when the volume of the influent gas and the effluent gas has met at least one predetermined setting and the alerting of the subject is by visible light.

17. As to Claim 16, Bird teaches a system wherein the gas flow alarm is set alert a subject desiring to receive the effluent gas when the volume of the influent gas and the effluent gas has met at least one predetermined setting and the alerting of the subject is audible.

18. As to Claim 17, Bird teaches a system further comprising a reset or test feature.

(11) Response to Argument

19. In response to Appellant's arguments with respect to claim 1, it should be noted that the term proximate is relative. Furthermore, with respect to the "second conduit

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has a length” renders the claim vague and indefinite since Appellant has not set forth structure or dimensions which give weight to the term “length”.

20. In response to Appellant’s arguments that claim 1 requires a nasal cannula, please note that claim 1 does not recite a nasal cannula.

21. In response to Appellant’s arguments that Connell does not teach a binary nasal cannula, please refer to Figure 5 of the Connell reference.

22. In response to Appellant’s arguments with respect to claims 4, 14, and 23, it should be noted that in Col. 9, lines 44-59, Bird teaches an alarm which indicates an unallowable pressure drop/rise which indirectly alerts a subject receiving the effluent gas. Please also see Col. 11, lines 9-18.

23. In response to Appellant’s arguments with respect to claims 5, 15, and 25, Bird does teach the use of a visible light in the form of an LED. Please see Col. 9, lines 53-54.

24. In response to Appellant’s arguments with respect to claims 6 and 16, Bird does teach an audible alarm to alert gas flow problems. Please see Col. 9, lines 48-50 and also note that pressure is indirectly related to flow and therefore the pressure drop/rise is also indicative of gas flow problems.

25. In response to Appellant’s arguments with respect to claims 8, 18, and 29 in regards to the location of the on/off with respect to the other elements, the application as originally filed did not disclose the significance of the on/off switch being substantially flush with or below the anterior surface, i.e., how it solves a stated problem as mentioned in the previous office action. Appellant in the arguments mentions that the

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feature is to prevent accidental disablement of the alarm system. However, there is no support for that reasoning in the originally filed Application and would constitute new matter if amended into the specification. Therefore, the Examiner maintains that an on/off switch as taught by bird would function equally as well. Finally, Appellant contends that Bird does not teach an on/off or retest switch. Please see Col. 9, lines 58-59 with respect to elements **297** and **298**.

26. In response to Appellant's arguments with respect to the transmitter and receiver and radio signal, the Examiner has cited art which shows that the particular feature of providing a transmitter/receiver/radio signal is known in the art for signaling a second person.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

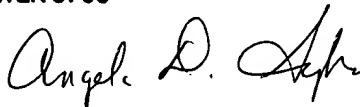
Examiner Mital Patel
July 26, 2003

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